

Title	Summary Judgment Rules (amend Cal. Rules of Court, rules 342 and 343; repeal rule 345)
Summary	<p>Several changes would be made to the rules relating to summary judgment motions. First, a new provision would be added to rule 342 that would require a party, at the request of another party or the court, to provide an electronic version of its separate statement. Second, rules 343 and 345 on objections to evidence in summary judgment motions would be consolidated. The rules would be modified to clarify that, if a party makes a proper evidentiary objection and requests a ruling on the it, the objection is preserved even if the trial court record does not contain specific rulings on the objection. Third, a number of stylistic changes have been made to the rules so that they employ plain language, including the use of “must” rather than “shall.”</p>
Source	Civil and Small Claims Advisory Committee
Staff	Patrick O’Donnell, Committee Counsel, 415-865-7665
Discussion	<p>Rules 342, 343, and 345 of the California Rules of Court relate to summary judgment motions. The advisory committee proposes to amend rules 342 and 343, and to repeal rule 345.</p> <p><i>1. Rule 342</i></p> <p>A new subdivision (i) would be added to rule 342. It would provide that, upon the request of a party or the court, a party must provide an electronic version of its separate statement. The electronic version may be in any mutually acceptable form. If the parties cannot agree on the format, the document to be exchanged must be provided in ASCII format.</p> <p><i>1. Rules 343 and 345</i></p> <p>Rules 343 and 345 relate to objections and the form of objections to evidence in summary judgment motions. These two rules would be consolidated. In addition, rule 343 would be amended to clarify what a party must do to preserve an evidentiary objection asserted in a motion for summary judgment.</p> <p>Issues about how to treat evidentiary objections when the trial court has not ruled on them have been the subject of various appellate decisions. (See, e.g., <i>City of Long Beach v. Farmers & Merchants Bank of Long Beach</i> (2000) 81 Cal.App.4th 780; <i>Biljac Associates v. First Interstate</i></p>

Bank of Oregon (1990) 218 Cal.App.3d 1410.) There is uncertainty in this area of the law. Adopting a rule of court on the preservation of evidentiary objections in summary judgment motions would result in greater consistency in such motions and ensure that attorneys and litigants do not encounter pitfalls that could be eliminated.

To clarify this matter, rule 343 would be amended to provide, first, that every evidentiary objection must be in the form of either (1) a written objection filed and served no later than 4:30 p.m. on the third day preceding the hearing or (2) an oral objection made at the hearing before a court reporter. If a party makes a proper written or oral objection under the rule *and requests a ruling at the time of the hearing*, the objection is preserved for appellate review even if the trial court record does not contain a specific ruling on the objection.

These provisions would provide greater certainty for parties and their attorneys regarding the procedures that they must follow to preserve their evidentiary objections for appellate review. The provisions would also guide the trial and appellate courts in determining whether an evidentiary objection has been preserved or waived.

Finally, both rule 342 and rule 343 would be amended to conform to the policy of using plain language of the California Rules of Court, including the use of “must” rather than “shall.”

Attachment

Proposal

Rules 342 and 343 of the California Rules of Court would be amended and rule 345 would be repealed, effective January 1, 2002, to read:

Rule 342. Motion for summary judgment or summary adjudication

- (a) **[Motion]** As used in this rule, “motion” refers to either a motion for summary judgment or a motion for summary adjudication.
- (b) **[Motion for summary adjudication]** If made in the alternative, a motion for summary adjudication may make reference to and depend upon the same evidence submitted in support of the summary judgment motion. If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty ~~shall~~ must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts.
- (c) **[Documents in support of motion]** The motion ~~shall~~ must contain and be supported by the following documents:
- (1) Notice of motion by *[moving party]* for summary judgment or summary adjudication or both;
 - (2) Separate statement of undisputed material facts in support of *[moving party's]* motion for summary judgment or summary adjudication or both;
 - (3) Memorandum of points and authorities in support of *[moving party's]* motion for summary judgment or summary adjudication or both;
 - (4) Evidence in support of *[moving party's]* motion for summary judgment or summary adjudication or both; and
 - (5) Request for judicial notice in support of *[moving party's]* motion for summary judgment or summary adjudication or both (if appropriate).
- (d) **[Separate statement in support of motion]** The separate Statement of Undisputed Material Facts in support of a motion ~~shall~~ must separately identify each cause of action, claim, issue of duty or affirmative defense, and each supporting material fact claimed to be without dispute with respect to the cause of action, claim, issue of duty, or affirmative defense. In a two-column format,

1 the statement ~~shall~~ must state in numerical sequence the undisputed material
2 facts in the first column and the evidence that establishes those undisputed facts
3 in the second column. Citation to the evidence in support of each material fact
4 ~~shall~~ must include reference to the exhibit, title, ~~and~~ page, and line numbers.
5

6 (e) **[Documents in opposition to motion]** The opposition to a motion ~~shall~~ must
7 consist of the following documents, separately stapled and titled as shown:
8

9 (1) *[Opposing party's]* memorandum of points and authorities in opposition to
10 *[moving party's]* motion for summary judgment or summary adjudication or
11 both;

12
13 (2) *[Opposing party's]* separate statement of undisputed material facts in
14 opposition to *[moving party's]* motion for summary judgment or summary
15 adjudication or both;

16
17 (3) *[Opposing party's]* evidence in opposition to *[moving party's]* motion for
18 summary judgment or summary adjudication or both (if appropriate); and
19

20 (4) *[Opposing party's]* request for judicial notice in opposition to *[moving*
21 *party's]* motion for summary judgment or summary adjudication or both (if
22 appropriate).
23

24 (f) **[Opposition to motion; content of separate statement]** Each material fact
25 claimed by the moving party to be undisputed ~~shall~~ must be set out verbatim on
26 the left side of the page, below which ~~shall~~ must be set out the evidence said by
27 the moving party to establish that fact, complete with the moving party's
28 references to exhibits. On the right side of the page, directly opposite the
29 recitation of the moving party's statement of material facts and supporting
30 evidence, the response ~~shall~~ must unequivocally state whether that fact is
31 "disputed" or "undisputed." An opposing party who contends that a fact is
32 disputed ~~shall~~ must state, on the right side of the page directly opposite the fact
33 in dispute, the nature of the dispute and describe the evidence that supports the
34 position that the fact is controverted. That evidence ~~shall~~ must be supported by
35 citation to exhibit, title, ~~and~~ page, and line numbers in the evidence submitted.
36

37 (g) **[Documentary evidence]** If evidence in support of or in opposition to a motion
38 exceeds 25 pages, the evidence ~~shall~~ must be in a separately bound volume and
39 ~~shall~~ must include a table of contents.

40 (h) **[Format for Separate Statements]** Supporting and opposing separate
41 statements in a motion for summary judgment ~~shall~~ must follow this format:
42

43 Supporting statement:

Undisputed Material Facts:

Supporting Evidence

1. Plaintiff and defendant entered into a written contract for the sale of widgets.

Jackson declaration, 2:17–21; contract, Ex. A to Jackson declaration.

2. No widgets were ever received.

Jackson declaration, 3:7–21.

Opposing statement:

Undisputed material Facts and Alleged Supporting Evidence:

Response and Evidence:

1. Plaintiff and defendant entered into a written contract for the sale of widgets. Jackson declaration, 2:17–21; contract, Ex. A to Jackson declaration.

Undisputed

2. No widgets were ever received. Jackson declaration, 3:7–21.

Disputed. The widgets were received in New Zealand on August 31, ~~1991~~2001. Baygi declaration, 7:2–5.

Supporting and opposing separate statements in a motion for summary adjudication ~~shall~~ must follow this format:

Supporting statement:

ISSUE 1—THE FIRST CAUSE OF ACTION FOR NEGLIGENCE IS BARRED BECAUSE PLAINTIFF EXPRESSLY ASSUMED THE RISK OF NJURY

Undisputed Material Facts:	Supporting Evidence
1. Plaintiff was injured while mountain climbing on a trip with Any Company USA.	Plaintiff's deposition, 12:3–4.
2. Before leaving on the mountain climbing trip, plaintiff signed a complete waiver of liability.	Smith declaration, 5:4–5; waiver of liability, Ex. A to Smith declaration.

Opposing statement:

ISSUE 1—THE FIRST CAUSE OF ACTION FOR
NEGLIGENCE IS BARRED BECAUSE PLAINTIFF
EXPRESSLY ASSUMED THE RISK OF INJURY

Undisputed Material Facts and Alleged Supporting Evidence:	Response and Evidence:
1. Plaintiff was injured while mountain climbing on a trip with Any Company USA. Plaintiff's deposition, 12:3–4.	Undisputed.
2. Before leaving on the mountain climbing trip, plaintiff signed a complete waiver of liability. Smith declaration, 5:4–5; waiver of Liability, Ex. A to Smith declaration.	Disputed. Plaintiff did not sign the waiver of liability; the signature on the waiver is forged. Jones declaration, 3:6–7.

(i) [Request for electronic version of separate statement] Upon request, a party must promptly provide to any other party or the court an electronic version of its separate statement that was used to prepare the document filed with the court. The electronic version may be provided in any mutually agreeable form, such as on a computer disk or by e-mail. If the parties cannot agree upon the format of the document to be exchanged, the document must be provided in ASCII format.

1 **Rule 343. Objections to evidence**

- 2
- 3 (a) **[Manner of Objection]** A party ~~desiring seeking~~ to make an objections to
- 4 evidence in the papers ~~on~~ in connection with a motion for summary judgment
- 5 ~~shall must~~ either (i) submit file and serve the objections in writing ~~pursuant to~~
- 6 ~~rule 345 in~~ accordance with (b) or (ii) make arrangements for a court reporter to
- 7 be present at the hearing and orally state the party's objection at the hearing.
- 8
- 9 (b) **[Form of written objection]** A written objection to evidence in support of or
- 10 in opposition to a motion for summary judgment must specify the evidence to
- 11 which objection is made, including, if applicable, the page and line number of the
- 12 objectionable evidence, and must state the grounds of each objection with
- 13 particularity. Any written objection must be filed and served no later than 4:30
- 14 p.m. on the third court day preceding the hearing.
- 15
- 16 (c) **[Preservation of objection]** If an evidentiary objection is made in accordance
- 17 with (a) or (b) of this rule and a request for a ruling on the objection is made at
- 18 the hearing, the objection is preserved even if the trial court record does not
- 19 contain a specific ruling on the objection. An evidentiary objection not made in
- 20 writing or orally at the hearing in accordance with this rule is deemed waived.
- 21

22 **Rule 345. Form of written objections to evidence**

23

24 ~~A written objection to evidence is support of or in opposition to a motion for~~

25 ~~summary judgment shall state the page and line number of the document to which~~

26 ~~objection is made, and state the grounds of objection with the same specificity as a~~

27 ~~motion to strike evidence made at trial. Written objections shall be filed and served~~

28 ~~no later than 4:30 p.m. on the third court day preceding the hearing.~~